

Introduced by Senator Speier

February 22, 2005

An act to add Part 5.7 (commencing with Section 17800) to Division 9 of the Welfare and Institutions Code, relating to health care.

LEGISLATIVE COUNSEL'S DIGEST

SB 708, as introduced, Speier. Drug discount program: conditions of participation.

Existing law establishes the federal Medicaid program, administered by each state, California's version of which is the Medi-Cal program. The Medi-Cal program, which is administered by the State Department of Health Services, provides qualified low-income persons with health care services.

Existing federal law requires the United States Secretary of Health and Human Services to enter into an agreement with each manufacturer of covered drugs that are not subject to a rebate under an agreement between the state Medicaid program and the manufacturer under which the amount required to be paid to the manufacturer for covered drugs, with certain exceptions, purchased by a covered entity, as defined, does not exceed an amount equal to the average manufacturer price for the drug under the federal Medicaid program in the preceding calendar quarter, reduced by the rebate received pursuant to the Medicaid agreement.

This bill would require the State Department of Health Services to develop a standard contract for private nonprofit hospitals whereby a hospital agrees to provide medical care to indigent patients, as a condition of participation in the drug discount program established under federal law.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Part 5.7 (commencing with Section 17800) is added to Division 9 of the Welfare and Institutions Code, to read:

PART 5.7. HEALTH CARE FOR LOW-INCOME PERSONS
NOT COVERED BY THE MEDICARE PROGRAM OR THE
MEDI-CAL PROGRAM

17800. Any not-for-profit hospital that elects to participate in the drug discount program established under Section 340B of the Public Health Service Act shall enter into an agreement with the State Department of Health Services pursuant to this part.

17801. The State Department of Health Services shall develop a standard contract for use by any private not-for-profit hospital that desires to participate in the drug discount program provided for in Section 340B of the Public Health Service Act (42 U.S.C. Sec. 256b), which shall be in the following form:

MEMORANDUM OF UNDERSTANDING BETWEEN
THE STATE
DEPARTMENT OF HEALTH SERVICES AND

THIS MEMORANDUM OF UNDERSTANDING is made this ____ day of ____, ____ by and between the undersigned representatives of the State Department of Health Services (DHS) and _____, a nonprofit corporation organized and existing under the laws of the State of California.

RECITALS:

WHEREAS, ____ is a California not-for-profit hospital that provides a disproportionate share of health care services to the Medicare population in addition to supporting many

1 programs that benefit the indigent, uninsured, or
2 underinsured population in California;

3 **WHEREAS,** _____ desires to participate in the drug
4 discount program established under Section 340B of the
5 Public Health Service Act (the 340B Program);

6 **WHEREAS,** In order to participate in the 340B
7 Program _____ must enter into an agreement with a unit of the
8 state government pursuant to which _____ commits to provide
9 health care services to low income individuals who are not
10 entitled to Medicare or Medicaid benefits at no
11 reimbursement or considerably less than full reimbursement
12 from these patients;

13 **WHEREAS,** _____ desires to make such a formal
14 commitment to DHS;

15 **WHEREAS,** DHS agrees to accept such commitments
16 on behalf of the citizens of California;

17 **NOW, THEREFORE,** In consideration of the mutual
18 agreements and covenants contained therein and for other
19 good and valuable consideration, the receipt and sufficiency
20 of which hereby are acknowledged, it is mutually agreed and
21 covenanted, under seal, by and between the parties to this
22 agreement, as follows:

23
24 **1. Commitment of _____ to Provide**
25 **Indigent Care.**
26

27 During the term of this MOU, _____ agrees to continue
28 its historic commitment to the provision of health care to
29 indigent, uninsured, and underinsured residents of _____.
30 In 2006, this commitment totaled approximately \$ _____
31 in lost charges. Pursuant to this commitment, it is the
32 intention of _____ that indigent care provided during the
33 term of this MOU will range generally between 10
34 percent lower or higher than the above number. In any
35 event, _____ will assume that all patients will receive
36 necessary care, as required by law, regardless of ability
37 to pay.
38

39 **2. Acceptance and Acknowledgments of DHS**
40

1 (a) DHS accepts the commitment of ____ set forth
2 above;

3
4 (b) DHS hereby acknowledges that the health care
5 services provided by ____ hereunder are in the public
6 interest and are being provided to individuals who are
7 not entitled to benefits under Title XVIII, or eligible for
8 assistance under any State plan pursuant to Title XIX, of
9 the Social Security Act; and

10 (c) DHS acknowledges that ____ is providing these
11 services at no reimbursement or considerably less than
12 full reimbursement from the patients.

13 **3. Representations of ____.**

14 _____ represents that as of the date
15 hereof:

16 (a) ____ constitutes a corporation duly organized and
17 validly existing in good standing under the laws of the
18 State of ____ with the corporate power and authority to
19 enter into and perform its obligations under this MOU;
20 and

21 (b) ____ is a tax-exempt corporation under Section
22 501(c)(3) of the Internal Revenue Code of the United
23 States, as amended and under applicable laws of the
24 State of ____.

25 **4. Terms and Termination.** The term of this MOU
26 shall commence on the date first above written and shall
27 continue until terminated by either party upon not less than
28 60 days' prior written notice to the other.

29 **5. Notice.** All notices required or permitted to be given
30 under this MOU shall be deemed given when delivered by
31 hand or sent by registered or certified mail, return receipt
32 requested, addressed as follows:

33
34 _____
35
36 Sent to: (Hospital Representative) ____

37 Attention: _____

38 _____
39 _____

1 **6. Governing Law.** This MOU shall be governed by
2 and construed in accordance with the laws of the State of
3 California.
4

5 IN WITNESS WHEREOF, _____ and
6 the DHS have executed this agreement as of the day and year
7 first written above by their duly authorized representatives.

8 WITNESS:
9

10 _____
11 DHS

12 Name: _____

13 Title: _____

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